

**B. Issues 3 and 4**

**Issue 3**

**Should the ILECs' local calling area boundaries be imposed on GNAPs, or may GNAPs broadly define its own local calling areas?**

**Issue 4**

**Can GNAPs assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides?**

**GNAPs Position**

GNAPs intends to offer LATA-wide local calling by defining its local calling area as the entire LATA. All intraLATA traffic exchanged between GNAPs and Pacific or Verizon should be treated as subject to local compensation under § 251(b)(5) and should not be subject to intrastate access charges. GNAPs asserts that its proposal would exert downward pressure on the current monopoly-priced intraLATA access services by offering an innovative competitive telecommunications product.

GNAPs indicates that its designation of a LATA-wide local calling area is clearly permitted by law. The FCC has permitted the states to determine what geographic areas should be considered "local areas" for purposes of applying reciprocal compensation obligations under § 251(b)(5).

According to GNAPs the definition of local calling areas (LCA) is a legacy of an ancient telephone network topology. Deployment of fiber has made call quality distance-insensitive and rendered application of distance-based charges virtually meaningless. GNAPs asserts that the ILECs' LCAs should not define GNAPs' LCAs because there is no cost basis for these calling areas.

Pacific and Verizon propose to allow GNAPs to expand its local calling area, yet assess intrastate access charges on GNAPs when calls pass between ILEC-defined LCAs. That would put GNAPS in an impossible price squeeze because GNAPs' costs for the call resulting from access charges are in excess of retail rates that GNAPs could reasonably charge end-users.

GNAPs states that it should be allowed to assign its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides. Consistent with historic practice, a call's status as "local" should be determined by referring to the NPA-NXXs<sup>8</sup> of the calling and called numbers, and this principle should apply in the context of foreign exchange (FX) service. A party that terminates such FX traffic should receive reciprocal compensation from the originating carrier if the NPA-NXX codes indicate that the call is local.

Standard industry practice establishes the fact that FX traffic is local. The classification of the call is determined by comparing the rate centers associated with called and calling party's NPA-NXXs, not the physical location of the customers. The ILECs' proposal to treat calls from their customers to GNAPs' FX customers as toll traffic is a departure from the ILECs' own method of determining jurisdiction. According to GNAPs, the ILEC proposals are impractical because there is no readily available information that tells a carrier the physical location of a calling or called party.

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<sup>8</sup> Telephone numbers are generally assigned in blocks of 10,000 numbers. Each 10,000-number block is identified by a three-digit area code (or Number Plan Area, NPA), followed by a three-digit (NXX) central office code.

GNAPs states that the ILECs' proposals to impose access charges on GNAPs for calls to GNAPs' FX customers and to deny reciprocal compensation for such calls will eliminate competition for the ILECs' FX service. If the ILECs are permitted to characterize GNAPs' FX service as toll traffic and to apply switched access charges, such above-cost pricing ultimately would make the offering of competitive alternatives by CLECs infeasible. As this Commission has recognized:

The rating of a call, therefore, should be consistently determined based upon the designated NXX prefix. Abandoning the linkage between NXX prefix and rate center designation could undermine the ability of customers to discern whether a given NXX prefix will result in toll charges or not. Likewise, the service expectations of the called party (*i.e.*, ISPs) would be undermined by imposing toll charges on such calls since customers of the ISPs would be precluded from reaching them through a local call.<sup>9</sup>

GNAPs believes there are compelling arguments for virtual NXX (VNXX) calls to be deemed local. Use of VNXXs does not impose additional transport costs on the ILECs so there is no cost justification for imposition of toll charges. Instead, such traffic should be deemed local for purposes of reciprocal compensation. GNAPs asserts that adopting its arguments would allow the originating carrier to define what is or is not a toll call, with the result that competition will continue to expand the size of the local calling areas.

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<sup>9</sup> Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, Rulemaking 95-04-043, D.99-09-029 at 25-26 (September 2, 1999).

GNAPs rebuts the ILECs' assertions that GNAPs' proposed FX service offering burdens the ILECs with added transport costs, saying that the ILECs' networks are not the only ones that provide transport for FX traffic. Therefore, GNAPs' FX service would generate the same costs that are involved with the delivery of any other local traffic to the POI.

GNAPs claims that assertions that ILECs are losing toll revenues by not being able to bill originating customers toll rates for calls to CLEC FX numbers is also incorrect. The very point of FX service is to provide end users a local calling number, and there is no reason to assume that this traffic would exist if it required a toll call. The Commission should also reject Pacific's proposal that CLECs be required to purchase a private line from Pacific in order to provide FX service, just as Pacific's retail FX customers do. This would retain Pacific's FX revenues at its current level by forcing CLECs to replace each dollar of FX revenue Pacific loses to a competitor. It is also inapplicable to CLEC network architecture because the dedicated line runs between two Pacific switches, but GNAPs typically serves an area using only one switch. Also, Pacific's proposal conflicts with the Act's goal of encouraging the introduction of new, innovative methods of providing service by new entrants, because it forces CLECs into provisioning service in the same manner as Pacific does. As this Commission recognized in D.99-09-029:

For purposes of considering the issue of call rating, it is not necessary to deliberate at length over whether Pac-West's service conforms to some particular definition of "foreign exchange service" based upon specific provisioning arrangements. Although the Pac-West form of service differs from certain other forms of foreign exchange service in how it is provisioned, the ultimate end-user expectation remains the same, namely to achieve a local presence within an exchange other than where the customer resides.

From the end-use customer's perspective, Pac-West's service is a competitive alternative to other forms of foreign exchange service. (D.99-09-029 at 23-24.)

GNAPs incurs termination costs to deliver an FX-like call to its customers. The current regulatory regime requires that GNAPs be compensated for those termination costs. The FCC recently acknowledged this in the Intercarrier Compensation NPRM, when it stated:

[e]xisting access charge rules and the majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC, or CMRS, to compensate the called party's carrier for terminating the call. Hence these interconnection regimes may be referred to as "*calling-party's-network pays*" (or CPNP). (Intercarrier Compensation NPRM at ¶ 9.)

Thus, the fundamental principle of the CPNP regime is that the party collecting the revenue for a call (*i.e.*, the originating party in the case of local exchange service) compensates the other party for use of its network. Therefore, GNAPs is lawfully entitled to recover its costs to terminate local exchange traffic originating on the ILECs' networks. The ILECs' position that GNAPs should compensate them in the form of access charges for GNAPs' FX-like traffic when the ILEC is collecting the revenue for these calls, turns the current CPNP regime on its head.

GNAPs asserts that its position is consistent with the FCC's ISP Remand Order, which does not excuse the ILEC from paying reciprocal compensation on GNAPs' FX-like traffic. As the Commission recognized in its order, all "telecommunications" traffic is subject to the reciprocal compensation provisions of the Act as set forth in 47 USC § 251(b)(5) and § 252(d)(2), whether the traffic is local or nonlocal. FX-like traffic is clearly telecommunications within the meaning of the Act.

Although Congress, in § 251(g), temporarily grandfathered preexisting federal compensation rules governing exchange access and information access traffic between LECs and IXC's or information service providers, there were no such rules with respect to virtual NXX traffic when the Act was passed. However, even if such preexisting compensation rules had existed, they would not be grandfathered by Section 251(g) because virtual NXX traffic is not "exchange access." By definition, GNAPs' FX-like service is not a toll service and is not included within the exemption from reciprocal compensation.

In its Supplemental Filing, GNAPs provided the following regarding disputed language in its ICA with Pacific relative to Issues 3 and 4:

- T&C, Definitions § 1.1.3 "Access Compensation": GNAPs' proposed modification removes language that Pacific could rely on to inappropriately apply access charges on certain types of traffic that GNAPs may exchange with Pacific.
- T&C, Definitions § 1.1.40 "Exchange Area": GNAPs' proposed modification clarifies that the party whose end-user originates the call will define that party's respective local calling area boundaries.
- T&C, Definitions § 1.1.56 "Foreign Exchange": GNAPs' proposed modification broadens the definition of FX service to incorporate the type of LATA-wide local calling service that GNAPs intends to offer in California.
- T&C, Definitions § 1.1.60 "Information Access Traffic": GNAPs provides a definition for internet-bound traffic consistent with the FCC's definition in FCC 01-131.
- T&C, Definitions § 1.1.64 "Interexchange Carrier": GNAPs clarifies that an IXC is a carrier that provides Telephone Toll Service, a service defined by the Communications Act. See 47 USC 153(48).

- T&C, Definitions § 1.1.68 "IntraLATA Toll Traffic": GNAPs replaces Pacific's language referring to a "normal" local calling area with language indicating that it is the originating carrier's local calling area that defines each party's local calling area.
- T&C, Definitions § 1.1.76 "Local Calls": GNAPs deletes Pacific's narrow definition of local calling areas and replaces that definition with language that clearly establishes that the originating carrier defines its own local calling area.
- T&C, Definitions § 1.1.78 "Location Routing Number": GNAPs removed ambiguities surrounding Pacific's definition and ensures that the ICA does not require that NXX codes be associated with any particular physical customer location, or used for the purpose of assessing whether a call is local or toll.
- T&C, Definitions § 1.1.79 "Local Service Provider": GNAPs removes "Local Service Provider" as a defined term because the term is duplicative of another already defined term in the agreement, "local exchange carrier."
- T&C, Definitions § 1.1.83 "Meet Point Billing": GNAPs removes language that Pacific could rely on to inappropriately apply access charges on certain types of traffic that GNAPs may exchange with Pacific.
- T&C, Definitions § 1.2.8 "Routing Point": GNAPs clarifies that NXX codes need not be associated with any particular physical customer location and should not be used for the purpose of assessing whether a call is local or toll.
- T&C, Definitions § 1.1.86 "Mutual Compensation": GNAPs broadens the definition of "local calls" to ensure that the definition includes calls that are compensable under federal and state law.
- T&C, Definitions § 1.1.137 "Wire Center": GNAPs clarifies that a serving wire center need not be utilized

solely for the purpose of transmitting so-called "local" calls.

- T&C, Definitions § 1.6.7 "Switched Exchange Access Service": GNAPs clarifies that switched exchange access service mirrors the federal statutory definition of this service. Specifically, switched exchange access service means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services, a service defined by the Communications Act. *See* 47 USC 153(16).
- Recip. Comp. § 3.2: GNAPs requires that parties treat "local call" and "local ISP calls" the same for mutual compensation purposes, at least until Pacific chooses to invoke the FCC's rate structure for ISP-bound calls.
- Recip. Comp. § 3.7: GNAPs removes any limitation on GNAPs' ability to utilize NXX codes to provide innovative service offerings, including LATA-wide local calling services.
- Recip. Comp. § 6.2: GNAPs eliminates Pacific's ability to impose access charges on those ISP-bound calls that GNAPs carries through its LATA-wide local calling service.
- Recip. Comp. § 17.1: GNAPs clarifies that the parties have agreed to specific contract language on important terms and conditions, but denies Pacific's ability to contractually bind GNAPs with related terms and obligations that are not specifically agreed to by both parties within the "four corners" of the document.
- Numbering § 2.2: GNAPs clarifies that NXX codes need not be associated with any particular rate center, and should not be used to identify the jurisdictional nature of traffic.
- Numbering § 2.3: GNAPs clarifies that NXX codes need not be associated with any particular physical customer



location and should not be used for the purpose of assessing whether a call is local or toll.

- Numbering § 2.7: GNAPs clarifies that NXX codes need not be associated with any particular physical customer location and should not be used for the purpose of assessing whether a call is local or toll.

In its Supplemental Filing, GNAPs provided the following regarding disputed language in its ICA with Verizon relating to Issues 3 and 4:

- T&C Glossary § 2.34: GNAPs provides that each party may define its own extended area service, a complement to language proposed elsewhere that rejects Verizon's attempts to impose its own local calling area boundaries upon GNAPs.
- T&C Glossary § 2.47: GNAPs provides greater clarity by defining DXCs as carriers that provide telecommunications services for a toll charge, rather than more abstract categories of service.
- T&C Glossary § 2.56: GNAPs removes one-sided language tying this definition to Verizon's legacy local calling area.
- T&C Glossary § 2.71: GNAPs removes language that ties rate center areas to exclusive geographical designations.
- T&C Glossary § 2.72: GNAPs simplifies this definition, tying it directly to applicable federal law definitions, and eliminates unnecessary restrictions on rate center point locations.
- T&C Glossary § 2.77: GNAPs simplifies this definition and eliminates language that ties routing points to the location of specific NPA-NXXs.
- T&C Glossary § 2.83: GNAPs increases clarity by tying this definition directly to the federal statutory definition.

- T&C Glossary § 2.91: GNAPs simplifies this definition by tying it directly to the applicable federal statutory definition and providing a more accurate distinction between intraLATA toll traffic and interLATA toll traffic.
- Interconnection § 6.2: GNAPs' proposed modification allows each party to measure and bill for traffic based upon its own defined local calling areas. GNAPs also eliminates redundant language rendered superfluous by the proposed modification of § 6.1.1.
- Interconnection § 7.3.4: GNAPs would eliminate language attempting to tie GNAPs' interconnection architecture and reciprocal compensation receipts to Verizon's legacy architecture, specifically, Verizon's Optional Extended Local Calling Area.
- Interconnection § 9.2.1: GNAPs eliminates Verizon's requirements that would require GNAPs to assign NPA-NXX codes for access toll connecting trunk group architecture to a related geographical rate center area, thereby defeating GNAPs' ability to provide VNXX and other services.
- Interconnection § 13.3: GNAPs eliminates Verizon language requiring GNAPs to adopt Verizon's rate center areas and rate center points, thereby limiting GNAPs' competitive options.

#### **Pacific's Position**

Pacific is willing to allow a non geographic assignment of an NPA-NXX code, or "virtual NXX" arrangement, as long as it is functionally equivalent to foreign exchange service. Pacific is willing to pay reciprocal compensation for calls with disparate rating and routing points that Pacific must transport between its calling areas for the CLEC as part of the CLEC's FX-like offering. But Pacific asserts it is entitled to receive tandem switching and transport compensation at TELRIC prices for transporting and tandem switching those calls.

By contrast, GNAPs proposes to create "LATA-wide" virtual NXXs that would provide LATA-wide free calling to GNAPs' customers. GNAPs does not propose to compensate Pacific for transporting those toll-free virtual NXX calls between Pacific's calling areas. Rather, Pacific would have to pay GNAPs reciprocal compensation.

Pacific sees an important difference between FX and intraLATA toll-free calling. Foreign exchange service "is a way to transfer the geographic rating point of the called party from one exchange to another." (D.00-09-029 at 13.) Even if the called party is physically located in a different exchange from where the call is rated, the relevant rating point is the rate center of the NXX prefix. GNAPs would change that so no longer would every NPA-NXX code correspond to a unique rate center, which is a designated geographical point. In a decision involving Pac-West Telecom, a CLEC, the Commission allowed Pac-West to implement an FX-like offering, but took care to explain that:

The Pac-West arrangement is equivalent to foreign exchange service, not to intraLATA toll-free calling... Just as with other forms of foreign exchange service, the Pac-West arrangement relocates the rate center from which incoming calls are rated as either local or toll. Unlike intraLATA toll-free calling, however, the Pac-West arrangement does not permit a caller from *any* location to dial the ISP toll-free. The calling party would still incur toll charges if the call was made from a location whereby the *rate center of the calling party was more than 12 miles from the rate center for the ISP's NXX prefix.* (D.99-09-029 at 19, *emphasis added.*)

While GNAPs' witness Lundquist equates GNAPs' LATA-wide free calling proposal with a virtual FX arrangement, it is intraLATA toll-free calling, not FX. As the Commission recognized above, an intraLATA toll-free service is

one that permits a customer to dial toll-free from any location in the LATA, just as GNAPs proposes.

According to Pacific, the consequences of allowing GNAPs to implement LATA-wide calling are enormous. First, Pacific would lose intraLATA toll revenues from calls originated anywhere in the LATA to GNAPs' customers. Second, Pacific would lose any compensation from GNAPs for transporting those calls throughout the LATA, and the Commission would lose its authority to determine local calling areas.

Pacific states that GNAPs' proposal is directly opposed to decisions in which this Commission allowed ILECs to be reimbursed, through TELRIC-based charges for the use of their networks in FX-like arrangements.

Whatever method is used to provide a local presence in a foreign exchange, a carrier may not avoid responsibility for negotiating reasonable intercarrier compensation for the routing of calls from the foreign exchange merely by redefining the rating designation from toll to local...A carrier should not be allowed to benefit from the use of other carriers' networks for routing calls to ISPs while avoiding payment of reasonable compensation for the use of those facilities. (D.99-09-029 at 18.)

Consistent with earlier decisions, this Commission resolved the free-ride issue in Pacific's favor in the most recent AT&T/Pacific arbitration.

Also, GNAPs envisions a mirror-image compensation scheme for calls originated by GNAPs and terminated to Pacific or other LECs. Specifically, the compensation GNAPs is willing to pay to the terminating LEC would depend on whether the physical ends of the call are within GNAPs' local calling area. If so, GNAPs would pay reciprocal compensation, not access charges. According to Pacific, this aspect of GNAPs' proposal was never discussed in pleadings or

testimony. GNAPs' outward calling proposal became apparent to Pacific only when GNAPs had to make a Supplemental Filing.

Pacific's witness Mindell testified that Pacific does not preclude the development of LATA-wide NXX. However, NXXs must have geographically specific rate centers in order to identify the jurisdictional nature of the traffic for intercarrier compensation. Number portability also relies on a rating point for an NXX. Due to FCC requirements, currently numbers may only be ported within a rate center.

Pacific provided the following information regarding its specific contract language disputes with GNAPs relative to Issues 3 and 4:

- GT&C: Definition "Access Compensation": GNAPs removes the definition from the contract, saying that Pacific could rely on it to inappropriately apply access charges to certain types of traffic that GNAPs may exchange with Pacific. GNAPs does not explain what types of traffic Pacific might "inappropriately" apply access charges to, or why those charges would be inappropriate.
- GT&C: Definition "Exchange Area": GNAPs' proposed change goes beyond clarifying anything. The FCC gives state commissions, not CLECs, the authority to determine what geographic areas should be considered local areas.
- GT&C: Definition "Foreign Exchange": GNAPs' LATA-wide local calling is not equivalent to FX service. The service would be provided at Pacific's expense, and Pacific would have to provide virtually the entire service and would lose the toll or access revenue that it would otherwise receive. GNAPs' proposal is not consistent with Telcordia's Central Office Code Assignment guidelines or the FCC's number portability requirements.

- GT&C: Definition "Information Access Traffic": GNAPs' definition is not consistent with the FCC's definition in FCC 01-131.
- GT&C: Definition "Interexchange Carrier " (IXC): IXC is not defined in the Act or in the FCC's rules. Under GNAPs' proposed change, a carrier could apparently exempt itself from paying access charges simply by not including a "separate charge" for long distance service in its contracts with subscribers. This is another example of GNAPs' attempts to use its retail price structure to avoid its intercarrier compensation obligations.
- GT&C: Definition "IntraLATA Toll Traffic": In addition to displacing the state commission's authority to set local calling areas, GNAPs' modification provides that the originating carrier would define not just its own, but each party's local calling area. This would allow GNAPs to avoid paying access charges when an ILEC terminates an interexchange call for GNAPs.
- GT&C: Definition "Local Call": this should be rejected for the same reasons given in the definition for IntraLATA toll traffic.
- GT&C: Definition "Local Service Provider": Pacific agrees to this change.
- GT&C: Definition "Location Routing Number": The language GNAPs deletes "The purpose and functionality of the last four (4) digits of the LRN have not yet been defined but are passed across the network to the terminating switch" is accurate and factual.
- GT&C: Definition "Meet Point Billing": See Pacific's comments regarding "Access Compensation."
- GT&C: Definition "Mutual Compensation": The words GNAPs proposes to add are vague and ambiguous.
- GT&C: Definition "Routing Point": Pacific's definition of "Routing Point" is simple, straightforward, and is consistent with FX-like offerings previously allowed by

the Commission. It allows a CLEC customer to be assigned a number with different routing and rating points, provided those points are in the same LATA. GNAPs presented no testimony describing its proposed change. Also, GNAPs' language is more than just a definition. It creates many substantive rights and obligations of the parties. The proposed definition specifies that GNAPs can establish a single routing point within the entire SBC region.

- GT&C: Definition "Switched Exchange Access Service": The definition to which GNAPs objects pertains only to Ameritech. GNAPs' proposed modification is irrelevant and should be rejected.
- GT&C: Definition "Wire Center": Pacific's language is a workaday description of a serving wire center. This is a minor modification, but it is unnecessary since Pacific's definition makes no attempt to jurisdictionalize calls.
- Recip. Comp.: § 3.2: Pacific agrees that calls will not be handled differently based on whether GNAPs' customer is an end user or an ISP. GNAPs refuses to recognize that Pacific may be entitled to exclude FX calls from reciprocal compensation after that issue is finally decided by the CPUC, and excludes Pacific's ability to seek reimbursement for long-haul traffic.
- Recip. Comp.: § 3.7: Pacific allows GNAPs to provide Virtual NXX service with the same limitations applied by the Commission in other proceedings. *See* Recip. Comp. § 3.2 and Numbering, § 2.2.
- Recip. Comp.: § 6.2: GNAPs' LATA-wide local calling services, which denies the ILEC any compensation for performing the underlying service, is contrary to law and public policy.
- Recip. Comp.: § 17.1: Pacific's language provides that specified portions of the General Terms and Conditions are legitimately related to each interconnection, service and network element provided under the ICA. By

deleting virtually the entire clause, GNAPs would make it that virtually none of the GT&Cs is applicable to the rest of the agreement, raising serious issues of interpretation and construction.

- Numbering: § 2.2: Pacific recognizes that the Commission has allowed NXX codes with different rating and routing points, but the Commission has also said that an NXX code must be associated with a rate center, so it is untrue that "NXX codes need not be associated with any particular rate center."
- Numbering: § 2.3: This should be rejected for the same reasons given in § 2.2 above. Also, GNAPs fails to explain how it would comply with the FCC's number portability requirements.
- Numbering: § 2.7: This should be rejected for the same reasons given in § 2.2 above. In addition, GNAPs fails to explain why it has deleted the NXX migration provision, which simply minimizes the number of telephone numbers that must be ported between networks.

#### **Verizon's Position**

GNAPs attempts to hoodwink the Commission into making a ruling far larger than this two-party contract arbitration. Nothing in Verizon's proposed contract prohibits GNAPs from defining its own local calling area for purposes of its retail offerings. The real dispute is one of intercarrier compensation. Because access charges are generally higher than reciprocal compensation rates, GNAPs seeks to avoid paying access charges by defining away toll calling.

GNAPs downplays its proposal to eliminate Verizon's right to charge access rates as simply a "consequence of a competitive market." By arguing for reciprocal compensation for what has always been designated as a toll call, GNAPs is attempting to take implicit universal service support flows out of the



system and give them to their shareholders and/or their customers, thus making no state-side contributions to the support of universal service.

Both the Maryland and Pennsylvania Commissions have addressed this issue and rejected using the CLEC-defined local calling areas as the basis for reciprocal compensation.

According to Verizon, another troubling aspect of GNAPs' proposal is its admitted effect on changing the rate Verizon customers pay to Verizon for calls between local calling areas within a LATA whenever GNAPs unilaterally determines that the applicable local calling area should be larger than Verizon's. GNAPs may define its own local calling area for its customers; however, GNAPs should not be permitted to dictate Verizon's local calling areas for its own customers. Moreover, under GNAPs' proposal to nullify existing access charges, economic principles would require Verizon to align its rates to reflect GNAPs' local calling areas. Verizon asserts that if addressed at all, this issue should not be considered within the confines of a two-party arbitration, but in a generic proceeding where all interested parties can participate and be heard.

Verizon asserts that GNAPs should not be permitted to assign its customer NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides. GNAPs wants to treat VNXX calls as local for purposes of reciprocal compensation. Verizon urges the Commission to reject GNAPs' effort to game the system to its advantage.

The local/toll distinction recognizes that a customer's telephone number serves two separate but related functions: proper call routing and rating. In fact, each NXX within an NPA is assigned to both a switch and a rate center. As a result, telephone numbers provide the network with specific information necessary to route calls correctly to their intended destinations. At

the same time, telephone numbers also identify the exchanges of both the originating caller and the called party to provide for the proper rating of calls. It is the latter function that is at the heart of the VNXX issue.

GNAPs wants to assign NXX codes to its customers who do not reside in the rate centers to which those NXX codes are associated. The only reason to assign NPA-NXX codes in this manner is to arbitrage existing routing and billing systems. The switch is completely reliant upon the LERG and the geographic assumptions underlying the LERG for proper routing and rating information. Thus, Verizon has no independent way of verifying whether a particular call on which GNAPs is seeking reciprocal compensation is actually a local call made between callers in the same local calling area or whether it only appears to be a local call because of the Virtual NXX assignment.

According to Verizon, the financial benefit GNAPs stands to gain from its Virtual NXX proposal is telling. Not only would GNAPs collect reciprocal compensation for each purported "local" minute but also it would be able to offer telephone toll services at exchange service prices.

Despite GNAPs' effort to redefine what traffic is local and what traffic is not, the definitional distinction between local and toll rating is specifically codified in 47 USC § 153. Consequently, the Act reserves the historical distinction between local calls within an exchange area and toll calls traversing exchange boundaries.

Verizon asserts that this Commission and others that have considered the Virtual NXX issue have rejected GNAPs' approach. The Commission made it clear in D.99-09-029 that CLECs must pay appropriate compensation for their NXX assignment choices. The Commission's decision is clear that while a CLEC

may assign NXX codes however it wants, it is not permitted to game the system by avoiding the payment of appropriate fees associated with Virtual NXX calls.

The Commission addressed the "fee avoidance" issue again in the Level 3 arbitration with Pacific. In that case, the Commission rejected Level 3's arguments that it should not have to pay Pacific for use of Pacific's facilities involved with VNXX calls. Level 3 requested rehearing on the lawfulness of the Commission's findings about the deployment of NXX codes, and the Commission upheld its earlier ruling noting that the "record shows that Level 3's assignment of VNXX codes from one rate center to customers that are physically located in another rate center involves Pacific's provision of foreign exchange ("FX") service, not 'local' service. Accordingly, Pacific not only had a right to be compensated for the use of its facilities, but also had no obligation to pay reciprocal compensation to Level 3 for these "non local" calls.

Verizon states that the overwhelming majority of state commissions to consider the issue have held that reciprocal compensation is not due on Virtual NXX because that traffic does not physically terminate in the same local calling area in which it originates. Those state commissions include: Illinois, Pennsylvania, Texas, South Carolina, Tennessee, Georgia, Maine, and Missouri. Furthermore, several of these other state commissions have explicitly determined that access charges, rather than reciprocal compensation, should apply to VNXX traffic. The Tennessee Commission, for example, stated that "calls to an NPA/NXX in a local calling area outside the local calling area where the NPA/NXX is homed shall be treated as intrastate interexchange toll traffic for

purposes of intercarrier compensation and, therefore, are subject to access charges.”<sup>10</sup>

Verizon rebuts GNAPs’ claim that Verizon does not accept symmetry between the Virtual NXX scenario and the FX scenario. While the two services are similar, there are fundamental differences. When Verizon offers FX service, the customer agrees to pay a monthly charge to Verizon for transporting calls that would otherwise be toll calls to the customer and for which Verizon would normally bill the originating party. Furthermore, unlike real FX service, Virtual NXX does not use lines dedicated to a customer for transporting the call between rate centers.

Verizon provides the following information to support its proposed language in the ICA relating to Issues 3 and 4:

- T&C Glossary § 2.56: Verizon’s definition for “Measured Internet Traffic” identifies traffic that is subject to the interim compensation regime adopted by the FCC. GNAPs deletes references and descriptions of Verizon’s local calling areas and also to 1+ calls.
- Glossary § 2.71 “Rate Center Area”: GNAPs’ edit appears to be based on the incorrect assumption that the term “LEC” in the ICA means Verizon only. That is not correct. The term “LEC” includes all LECs, not just incumbents, consistent with the Act’s definition. For purposes of the ICA, it is necessary to use the word “exclusive” in order to clarify geographic areas identified by Verizon and Verizon alone, as opposed to geographic areas that may have been defined by other LECs as well.

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<sup>10</sup> BellSouth/Intermedia Arbitration Order at 44.

- Glossary § 2.72 “Rate Center Point”: There is no need to replace the terms “Telephone Exchange Service” and “Toll Traffic” with the broader term “Telecommunications Service” because the calls being measured for purposes of this definition are Telephone Exchange Service and Toll Traffic. GNAPs’ edits serve no purpose and would confuse an otherwise clear definition.
- Glossary § 2.77 “Routing Point”: GNAPs’ proposed change would permit the Routing Point to be in a different LATA than the rate center to which the NPA/NXX is assigned. This is contrary to GNAPS’ recognition that it must have at least one physical POI per LATA.
- Glossary §§ 2.47 and 2.83 IXC and Switched Access Exchange: Contrary to GNAPs’ proposed language, there is nothing that requires an IXC to impose a toll charge for its services. GNAPs would significantly revise the definition of “Switched Exchange Access” and provide a much less precise definition, which leaves the provision unworkable.
- Glossary § 2.91 Toll Traffic: GNAPs’ proposed change to this definition ignores existing rules regarding toll traffic, instead permitting GNAPs to define an interLATA toll call as something else by virtue of whether a carrier bills an end-user a toll charge. GNAPs’ proposed change makes the definition circular, and, therefore, meaningless.
- Interconnection § 9.2.1: GNAPs’ proposed language would result in misrouted and uncompleted terminating long distance calls. Verizon’s proposed language avoids this problem.
- Interconnection § 13.3: GNAPs’ edits would be contrary to FCC regulations. The FCC’s local number portability guidelines require that companies limit porting of telephone numbers to the same rate center. Verizon’s proposed language captures the FCC’s obligations.

### **Discussion**

The quick answer to Issue 3 is that, of course, GNAPs can define local calling area boundaries for its customers. Other CLECs have instituted LATA-wide calling for their customers. However, that question becomes more difficult to answer once it becomes clear that what GNAPs wants is to define the local calling areas of the ILECs with which it interconnects.

GNAPs is correct that the FCC leaves to the states the right to establish local calling areas within its boundaries. While that right rests with the Commission, the Commission has refused in other arbitrations to set new policies that impact on other entities that are not parties to the ICA. Under our rules,<sup>11</sup> other entities that are not parties to an ICA are precluded from participating in an arbitration proceeding before this Commission. Since that is the case, they would have no voice in setting the local calling areas for the ILECs. I agree with Verizon that this type of decision should not be made in the context of two-party arbitrations, but should be the subject of a Commission rulemaking where all interested parties have an opportunity to be heard. Therefore, I find that while GNAPs can establish what the local calling area can be for its own customers, it may not unilaterally set the local calling areas for ILEC customers. Since Issue 3 is resolved in the ILECs' favor, Issue 4 then relates only to GNAPs' own customers.

In its comments on the DAR, GNAPs indicates that it wants to define the calling areas for its own customers. According to GNAPs, the outcome in the DAR imposes restraints on GNAPs' ability to define calling areas that are larger

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<sup>11</sup> Resolution ALJ 181, October 5, 2000.

than the ILECs' because of the economic burdens of transport costs and access charges. GNAPs asserts that all intraLATA traffic exchanged between GNAPs and the ILECs should be subject to cost-based "local" compensation under § 251(b)(5) and should not be subject to intrastate access charges. No precedent exists which prevents GNAPs from determining its LATA-wide local calling area. In fact, GNAPs points out that the FCC has permitted the states to determine what geographic areas should be considered "the local area" for purposes of applying reciprocal compensation obligations under § 251(b)(5). GNAPs points out the artificial nature of current local calling areas, which are legacies of an ancient telephone network topology. According to GNAPs, the arbitrator failed to realize that under § 251(b)(5), the intraLATA traffic exchanged between the ILECs and GNAPs should never be subject to intrastate access charges where GNAPs defines the local calling area as LATA-wide.

GNAPs states that in its ISP Remand Order, the FCC concludes that reciprocal compensation applies to all telecommunications traffic that is not ISP-bound or subject to toll charges. The FCC explains that § 251(g) of the Act carves out certain categories of traffic, namely exchange access, information access, and exchange services—from the reciprocal compensation requirement. According to GNAPs, all traffic is subject to reciprocal compensation unless it falls into the specific exceptions defined by the FCC. This means that traffic that is not ISP-bound (information access) and is not subject to a toll charge (exchange access and exchange services for such access) is subject to reciprocal compensation. According to GNAPs, this section of the DAR is inconsistent; if the call is considered local for purposes of intercarrier compensation, then such compensation already includes the costs of switching and termination.

Based on the arbitrator's premise that VNXX calls are to be considered local, GNAPs concludes that access charges do not apply to VNXX calls. If the intent of the DAR is to impose access charges, it is in violation of the Act. Those calls cannot be subject to access charges because exchange access only applies to toll calls, and GNAPs does not impose a separate charge on its end-users for its FX-like service.

In its Comments on the DAR, Pac-West asserts that the imposition of transport and tandem switching charges (which Pac-West calls "Call Origination Charges") on disparately rated and routed traffic originated by an ILEC's customer and delivered to a CLEC with a single POI in that LATA destroys the fundamental economic effectiveness of the single POI policy. The single POI is specifically designed to allow new CLECs to compete without the need to construct local networks as geographically disbursed as the ILECs. According to Pac-West, those transport and tandem switching charges are harmful to competition in the local services market. Pac-West also asserts that the use of TELRIC-based rates is legally erroneous because the Commission has admitted that it has not yet determined the appropriate level of such charges, and has an open docket established specifically to make that determination.

Pac-West also states that the DAR improperly decides industry-wide issues in a private arbitration. Individual arbitrations, which involve only the two carriers that are parties to the ICA being arbitrated, are an unfair venue in which to make policy determinations, especially where the policy in question has extremely different impacts on parties denied participation rights by the Commission's rules. Instead, the status quo should be maintained until the fair and open rulemaking process is completed and then implemented on an industry-wide basis.



Furthermore, Pac-West asserts that both Pacific and the DAR rely upon the outcome in other arbitrations as a basis for the decision here to permit imposition of transport and tandem switching charges. Pac-West filed its Response to Pacific's Application for Arbitration on April 23, 2002, and submitted evidence that demonstrates several reasons why the transport and tandem switching charges should not be imposed on Pac-West. The evidence presented in that case is relevant to the same question posed in this arbitration, but much of that evidence is entirely lacking from the record in this arbitration. CLECs are in vastly different circumstances, and the DAR errs in relying on the outcome in previous arbitrations for justifying the position here.

GNAPs shares Pac-West's view that the DAR erroneously relied on determinations from other arbitrations proceedings. According to GNAPs, this is a violation of law; rulings are to be made based on the record evidence available. Since GNAPs was excluded from participating in prior arbitration cases by Commission rules, the determination made in those cases should not apply to GNAPs.

Contrary to GNAPs and Pac-West's claims, the DAR was developed based on the record evidence of this proceeding. The DAR simply states that particular outcomes, which were derived from the record before us, were consistent with other arbitrations settled by the Commission. The Commission wants to ensure that arbitration outcomes are consistent, if it is presented with the same set of facts.

In its Comments, GNAPs asserts that the DAR is silent on the issue of whether access charges can be imposed on VNXX traffic. The DAR indicates that GNAPs must compensate the ILECs for transport and tandem switching to carry that VNXX traffic. GNAPs states that the DAR appears to allow VNXX traffic to

be considered "local" for purposes of intercarrier compensation, yet the arbitrator still holds GNAPs responsible for costs on the ILECs' side of the POI.

In resolving Issue 4, I reiterate that the issue, as framed by the parties, is narrow in scope. It asks whether GNAPs can assign VNXX codes to its customers. In other words, it does not apply to the ILECs' customers. In its Comments on the DAR, Pac-West indicates that it is referring to "disparately rated and routed traffic originated by an ILEC's customer and delivered to a CLEC with a single POI in that LATA..." (Pac-West Comments at 2.) I have stated above that I will not alter the ILECs' local calling areas in an arbitration proceeding, rather, this should be the subject of a generic rulemaking where all interested parties may participate fully. It appears that Pac-West is broadening the issue beyond what GNAPs is requesting because in its Comments on the DAR, GNAPs itself states, "What Global [GNAPs] wants is to define the calling areas for *Global's customers*." (GNAPs' Comments at 17.) Since GNAPs is the party to this arbitration, we rely on what GNAPs is requesting.

The simple answer to Issue 4 is that GNAPs is entitled to specify the local calling area for its own customers. The difficult part comes in determining whether GNAPs must pay the ILECs for transporting its FX-type traffic.

I determined in Issues 1-2 above, that, in the case of any conflict between Federal and state rules, Federal rules would apply in an arbitration under Section 252. The FCC has addressed VNXX traffic specifically in its Intercarrier Compensation NPRM. Paragraph 115 in the NPRM requests comment on the specific issues before us in Issue 4. The pertinent portions of ¶ 115 read as follows:

We seek comment on the use of virtual central office codes (NXXs), and their effect on the reciprocal compensation and transport obligations of interconnected LECs. ...we

seek comment on the following issues: (1) Under what circumstances should a LEC be entitled to use virtual NXX codes? (2) If LECs are permitted to use virtual NXX codes, what is the transport obligation of the originating LEC? (3) Should the LEC employing the virtual NXX code be required to provide transport from the central offices associated with those NXX codes?

This paragraph was taken from an NPRM, so the FCC is not adopting rules, but is asking for comments, and has not yet ruled on the proper treatment of VNXX traffic. Once the FCC issues rules on this specific issue, the ICAs shall be amended, under the Change in Law provisions, to reflect the FCC's rules. However, in the meantime, the FCC has provided some guidance which will assist in resolving the issue of whether GNAPs should be required to pay transport and tandem switching charges for its disparately-routed traffic. Paragraph 115 demonstrates that the FCC believes that VNXX traffic is subject to reciprocal compensation obligations; the only open issue is the transport obligation.

Section 51.703(b), which was cited above in connection with Issue 1-2, and the FCC's Kansas/Oklahoma 271 Order as well as ¶ 112 in the Intercarrier Compensation NPRM make it clear that GNAPs cannot be required to pay for transport on the ILECs' side of the POI. There is currently no exclusion for the VNXX traffic.

This Commission has addressed the issue of VNXX codes and determined that while carriers may set disparate rating and routing points, ILECs are entitled to fair compensation for the use of their facilities in the transport of FX traffic.

The Commission order states that the appropriate place to determine the appropriate form of intercarrier compensation is through ICAs negotiated in

conformance with the Act. However, this determination by the California Commission is at odds with the FCC's orders (cited above) which bar ILECs from charging CLECs for transport of traffic on the ILECs' side of the POI. There is no exclusion for VNXX traffic, so that traffic would be covered by § 51.703(b).

In conclusion, GNAPs may implement disparate rating and routing points for its own customers, and is not required to compensate Pacific and Verizon for use of the ILECs' transport and tandem switching networks to carry that FX-type traffic. CLECs may not be assessed intrastate access charges or transport and tandem switching at TELRIC prices. However, I remind GNAPs that NXX codes must be associated with a rate center to identify the jurisdictional nature of the traffic for intercarrier compensation purposes. This does not prevent GNAPs from assigning NXXs that are not geographically correlated to the service area, merely that when assigning NXXs, GNAPs must assign these to a particular rate center.

In its Comments on the DAR, Pacific indicates that if GNAPs defines its local calling area as the entire LATA for its own customers, it results in an outcome that whenever GNAPs terminates a call that originated anywhere in GNAPs' local calling area to a LEC within GNAPs' local calling area, GNAPs would pay the terminating carrier reciprocal compensation rather than access charges. However, the same call carried in the opposite direction might incur access charges from GNAPs, not reciprocal compensation. Pacific states that the FAR should make it clear that, not only may GNAPs not offer LATA-wide local calling to end-users by defining its local calling area as the entire LATA, GNAPs may not unilaterally determine the terms of compensation between itself and other carriers by its designation of local calling areas. Pacific says this clarification would provide the rationale for the arbitrator's disposition of

disputed contract language between GNAPs and Pacific, e.g., Definitions §§ 1.1.3 and 1.1.40. I reject Pacific's proposal. GNAPs has the option of selecting a LATA-wide local calling area. Due to the difference in calling areas for GNAPs and the two LECs, the compensation arrangements will differ, depending on which carrier's customer initiates the call. That is a sign of a competitive marketplace, where carriers can differentiate the product they offer to their customers.

In the following section, I dispose of all the disputed contract language between GNAPs and Pacific, relating to Issues 3 and 4:

- T&C, Definitions § 1.1.3: GNAPs' position is adopted, and the definition for "Access Compensation" will not be included in the ICA. I have adopted GNAPs' LATA-wide calling regime for its customers, so GNAPs will not be required to pay access compensation for calls within the LATA.
- T&C, Definitions § 1.1.40: GNAPs' proposed language is adopted. GNAPs can define the local calling area for its customers.
- T&C, Definitions § 1.1.56: GNAPs' definition of FX is adopted. Pacific's definition would have included FX-like services, such as VNXX calls. While VNXX calls are FX-like, they are treated as local calls.
- T&C, Definitions § 1.1.60: The parties disagree as to whether GNAPs' definition of "Information Access Traffic" is consistent with the FCC's definition in FCC 01-131. In its Comments on the DAR, Pacific indicated that it opposes GNAPs' definition because it is not supported by the law. Pacific believes the definition was crafted by GNAPs to escape paying Pacific access charges when Pacific terminates long distance traffic for GNAPs. GNAPs did not provide comments in support of its definition. Pacific's position is adopted, and GNAPs' proposed definition is deleted from the ICA.

- T&C, Definitions § 1.1.64: Pacific's definition is more exact and will be adopted.
- T&C, Definitions § 1.1.68: GNAPs' proposed language is adopted. GNAPs' definition incorporates the LATA-wide calling concept that I adopted for GNAPs.
- T&C, Definitions § 1.1.76: GNAPs' proposed language is adopted. Local calls are defined by the originating carrier's local calling area. Pacific's definition would have used the same definition of a local call for both Pacific and GNAPs, which is not appropriate, since I have adopted LATA-wide calling for GNAPs.
- T&C, Definitions § 1.1.78: Pacific's proposed language is adopted. The language GNAPs deletes, namely the last four digits of the Location Routing Number, have nothing to do with the VNXX issue.
- T&C, Definitions § 1.1.79: GNAPs' proposed language is adopted. Pacific agreed to the change and presented no information as to why it should not be adopted.
- T&C, Definitions § 1.1.83: GNAPs' proposed language is adopted. See "Access Compensation" above.
- T&C, Definitions § 1.1.86: Pacific's proposed language is adopted. GNAPs' proposed language is vague.
- T&C, Definitions § 1.1.137: Pacific's proposed language is adopted. Pacific's definition has nothing to do with the classification of particular calls as local. As Pacific says, its definition makes no attempt to jurisdictionalize calls.
- T&C, Definitions § 1.2.8: GNAPs' proposed language is adopted. GNAPs' definition reflects the fact that it may use disparate rating and routing points within the same LATA.
- T&C, Definitions § 1.6.7: Pacific's proposed definition is adopted. Since that particular definition applies only in Ameritech states, there is no need to change it in an ICA between GNAPs and Pacific.

- Recip. Comp. § 3.2: GNAPs' proposed language is adopted. In order to qualify as local traffic, the originating and terminating end-users do not have to be physically located in the same ILEC Local Exchange Area. Such FX-type traffic is subject to reciprocal compensation.
- Recip. Comp. § 3.7: Pacific's proposed language is rejected, for the same reasons discussed in § 3.2 above. These FX-type calls are to be treated as local calls for intercarrier compensation purposes.
- Recip. Comp. § 6.2: GNAPs' proposed language is adopted. Pacific's language includes the statement that rating and routing is in accordance with the terminating parties' exchange access tariffs. GNAPs is not constrained by Pacific's tariff rules.
- Recip. Comp. § 17.1: Pacific's proposed language is adopted. As Pacific says, its language provides that specified portions of the General Terms and Conditions are legitimately related to each interconnection, service, etc., provided under the ICA. By deleting virtually the entire clause, GNAPs would have virtually none of the GT&C be applicable to the rest of the agreement.
- Numbering §§ 2.2, 2.3, 2.7: GNAPs' proposed language in § 2.2 is adopted. It restates that GNAPs' may assign NXXs without regard to the customer's physical presence in the rate center. GNAPs' position in § 2.3 is adopted. This merely restates § 2.2. Pacific's language would preclude disparate rating and routing. However, GNAPs must ensure that its system of assigning NXX codes is in compliance with the FCC's number portability requirements. Pacific's proposed language in § 2.7, which deals with the process for migrating an NXX from one carrier to another, is adopted.

In the following section, I dispose of all the disputed contract language between GNAPs and Verizon, relating to Issues 3 and 4:

- T&C Glossary § 2.34: GNAPs' proposed language, which makes it clear that the party providing service to a customer defines the customer's local calling area, is adopted.
- T&C Glossary § 2.47: Verizon's definition for IXC is adopted. Whether or not a carrier offers toll service for a specific charge is not the defining factor for an IXC.
- T&C Glossary § 2.56: GNAPs' proposed language is adopted. Verizon's language is problematic because it defines traffic from either carrier in terms of Verizon's local calling area. GNAPs has the right to define its own local calling area.
- T&C Glossary § 2.71: GNAPs' definition for "Rate Center Area" is adopted. Verizon's definition is so limited that it would appear to exclude VNXX traffic.
- T&C Glossary § 2.72: Verizon's proposed definition is clearer and will be adopted.
- T&C Glossary § 2.77: Verizon's proposed language is adopted. The routing point must be within the LATA in which the NPA-NXX is located.
- T&C Glossary § 2.83: Verizon's definition, which is more precise, is adopted.
- T&C Glossary § 2.91: Verizon's proposed language is adopted. It is more precise, and eliminates GNAPs' requirement that toll traffic relate to whether or not the carrier imposes a toll charge. Since GNAPs has LATA-wide local calling, all calls from GNAPs customers to another point within the LATA will be subject to reciprocal compensation, and such traffic will not be treated as intraLATA toll traffic, for purposes of compensation.
- Interconnection § 6.2: Verizon's proposed language is adopted, with modification. It explains the use of Traffic Factors, which should be a helpful tool in administering the ICA. However, GNAPs language, which indicates that the parties will supply Traffic



Factor information “in accordance with their defined calling areas” is adopted. This reflects the fact that GNAPs is adopting LATA-wide local calling, and that needs to be taken into account in supplying Traffic Factors. The reference to applicable tariffs is appropriate. That tariff section explains the measurement of billing minutes for toll traffic.

- Interconnection § 9.2.1: Verizon’s proposed language is adopted. If GNAPs chooses to subtend a Verizon access tandem, its NPA-NXX codes must subtend that access tandem for calls to be routed properly.
- Interconnection § 13.3: GNAPs’ proposed language is adopted. GNAPs cannot be required to adopt the same rate center area and rate center points as Verizon.

#### **C. Issue 5**

**Is it reasonable for the parties to include language in the agreement that expressly requires the parties to renegotiate reciprocal compensation obligations if current law is overturned or otherwise revised?**

#### **GNAP’s Position**

The proposed ICA submitted by Verizon acknowledged that GNAPs has a right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised. GNAPs believes that the language proposed by Verizon is not adequate because it does not directly pertain to the ISP Remand Order as the ICA does not deal with compensation for ISP bound traffic. If the ISP Remand Order is overturned, Verizon acknowledges that GNAPs should have the right to demand renegotiation, and, if necessary, further arbitration. The ICA should clearly state this in light of the pending decision on this matter.

In its Supplemental Filing, GNAPs provided the following regarding disputed language in its ICA with Verizon relating to Issue 5:

- T&C Glossary § 2.42 "Internet Traffic": GNAPs limits the definition of Internet traffic to exclude CMRS traffic and traffic that passes through the Internet but not between the parties.
- T&C Glossary § 2.74 "Reciprocal Compensation": GNAPs simplifies this definition by tying it directly to the applicable federal statutory provision.
- T&C Glossary § 2.75 "Reciprocal Compensation Traffic": GNAPs removes non-reciprocal language tying this term to Verizon's network architecture and eliminates the overly narrow definition of toll traffic, and makes it clear that current exclusions from reciprocal compensation may be altered by changes in applicable law.
- T&C § 4.7: GNAPs clarifies that Verizon's ability to discontinue benefits to GNAPs as a result of regulatory change is limited to final and non-appealable legislation and that any such discontinuance must be consistent with state and federal common carrier obligations.
- Additional Services § 5.1 "Voice Information Service Traffic": GNAPs eliminates an exclusion of this traffic from reciprocal compensation provisions, clarifies this definition, and removes several exclusions from the definition.
- Interconnection § 6.1.1: GNAPs clarifies the definition of "Traffic Rate" for billing purposes and explicitly provides for the possibility of a future change in law.
- Interconnection § 6.2: GNAPs' proposal would allow each party to measure traffic, and bill the other party, based upon its own defined calling areas. Although a carrier may market different calling area coverage to end-users, for purposes of intercarrier compensation, it would be inconsistent with the law to allow a carrier to decide what it will pay for use of the other carrier's network. Existing intercarrier compensation schemes may change over time, but they should change

uniformly and not piecemeal through ICAs. GNAPs' proposed change would have the parties bill each other for traffic based on the other party's definition of a defined calling area. The billing party would be unable to use CPN [Calling Party Number] to "jurisdictionalize" the call; instead, it would have to rely on factors provided by the other party.

- Interconnection § 7.2: GNAPs eliminates any possible contention by Verizon that the ICA provides for additional charges for termination from the IP to the customer of Reciprocal Compensation traffic delivered from either party's IP.
- Interconnection § 7.3: GNAPs' proposed amendments recognize the possibility of future changes of law with respect to whether traffic is Internet Traffic or Reciprocal Compensation Traffic for purposes of reciprocal compensation. It eliminates overly restrictive language regarding what comprises reciprocal compensation traffic.
- Interconnection § 7.4: GNAPs' proposed modification eliminates superfluous language that restates current federal law.

#### **Verizon's Position**

The parties do not dispute that the ICA shall be subject to future changes in the law. The only dispute is whether the ICA should treat changes to the ISP Remand Order differently than other changes in law. GNAPs has not presented any evidence as to why changes in the ISP Remand Order should be treated any differently from other changes. GNAPs itself has accepted Verizon's standard "change of law" language, and has not explained why it is inadequate for purposes of revising the parties' ICA in the event the ISP Remand Order is someday reversed or otherwise modified. GNAPs has provided no legitimate reason to carve out the ISP Remand Order from all other applicable law.

GNAPs' witness Lundquist specifically admitted that the "bill and keep" regime established in the ISP Remand Order governs compensation for Internet-bound traffic exchanged between the parties.

Verizon provides the following arguments for its proposed language in the ICA relating to Issue 5:

- T&C Glossary § 2.42: GNAPs has provided no explanation in support of its edits to the definition of Internet Traffic which expressly excludes any traffic to a CMRS provider and that adds a reference to traffic between the parties.
- T&C Glossary § 2.74: Verizon's definition of Reciprocal Compensation embodies the ISP Remand Order's intercarrier compensation obligations as they relate to Internet-bound traffic. Verizon's proposed definition is consistent with the FCC's ruling and captures the two key requirements for traffic eligible for reciprocal compensation. Verizon's definition is necessary to clarify what traffic is subject to reciprocal compensation and what traffic is not. GNAP's definition is too limited in the wake of the ISP Remand Order. At a minimum, Verizon is entitled to language specifying that reciprocal compensation provides for the recovery of costs incurred for the transport and termination of "Reciprocal Compensation Traffic" as defined and that Verizon's proposed terms accomplish this end.
- T&C Glossary § 2.75: GNAPs proposes that the determination of whether traffic is exchange access or information access – or whether reciprocal compensation is due on such traffic – should be based on the local calling area of the carrier originating the call. Such a proposal would produce a situation where calls between the same end-users would be classified as access or reciprocal compensation traffic depending on who originated the call. This would be unworkable but also contrary to the FCC's clear intent that state

commissions have the authority to determine local calling areas. GNAPs edits to §2.75 also change the description of toll traffic within the "Reciprocal Compensation Traffic" definition by deleting a reference to calls originating on a 1+ presubscription basis. GNAPs' also adds a phrase relating to change in law provisions which seeks to circumvent the "change in law" provisions set forth in §§ 4.5 and 4.6 of the General Terms and Conditions.

- Additional Service § 5.1: Voice information services are not limited to those where providers assess a fee, whether or not the fee appears on the calling party's telephone bill. Indeed, since Verizon may not bill for such services, many providers typically charge the calling party's credit card bill when assessing charges. GNAPs also deletes the reference to "intraLATA switched voice traffic." For purposes of this ICA, the voice information service traffic necessarily must be intraLATA traffic. If it is not, then the traffic would have to be deemed exchange access. GNAPs' edits do not take this into account. Also, despite GNAPs' edits to the contrary, Voice Information Service Traffic is like Internet traffic, and is not subject to reciprocal compensation. On the contrary, both Verizon and GNAPs recoup their costs via arrangements with the third party service/content provider.
- Interconnection § 6.1.1: GNAPs deletes the reference to the ISP Remand Order in the portion of the section that describes types of traffic and application of the appropriate traffic rates. GNAPs also conditions application of rates only to those minutes where CPN is passed, without providing any terms for what rate application should apply to minutes where CPN is not passed. Neither the FCC's Local Competition Order nor its ISP Remand Order included such limitations.

## Discussion

As Verizon states, the parties have agreed to the “change in law” provisions in §§ 4.5 and 4.6 of the ICA. That provision should cover any and all changes in law relating to specific provisions in the agreement. However, GNAPs raises a valid point that the language proposed by Verizon is not adequate because it does not directly pertain to the ISP Remand Order because the ICA does not deal with compensation for ISP-bound traffic. GNAPs’ proposal to include specific change-in-law language relating to the ISP Remand Order is adopted. The issue of compensation for ISP-bound traffic is central to the disputes between the parties, and I need to ensure that any change in law relating to that specific FCC order is reflected in the ICA.

In the following section, I dispose of all the disputed contract language between GNAPs and Verizon, relating to Issue 5. In some cases, the disputed contract language parties identified did not appear to be directly related to the narrow issue framed in Issue 5 but, in any event, I have resolved all contract language the parties indicated was in dispute, regardless of the relevance to Issue 5.

- T&C Glossary § 2.42: Verizon’s language is adopted. GNAPs does not explain why it deleted the reference to CMRS providers.
- T&C Glossary § 2.74: Verizon’s proposed language is adopted, with one modification. To make this definition perfectly clear, Verizon shall replace its reference to “the FCC Internet Order” with a cite to the specific FCC order.
- T&C Glossary § 2.75: GNAPs’ proposed language is adopted. It reflects the fact that reciprocal compensation obligations are not based on Verizon’s local calling areas, since GNAPs is allowed to have LATA-wide calling. As described above, reciprocal compensation traffic does include FX traffic that does

not originate and terminate within the same Verizon local calling area. In its Comments on the DAR, Verizon indicates that FX-type traffic should not be defined as "reciprocal compensation traffic." I do not agree with Verizon's position. An FX-type call is rated as a local call, and reciprocal compensation should apply. GNAPs' language reflects that outcome. The issue of whether the originating carrier should determine the local calling area was resolved in Issues 3-4.

- T&C § 4.7: Verizon's proposed language is adopted. This Commission has previously denied the request in an arbitration that parties need implement only "final and non appealable" orders and decisions. An order of this Commission or the FCC or the relevant court is effective unless stayed, and must be implemented by the parties. This is consistent with the outcome on Issue 13. GNAPs' proposed language is adopted for the final sentence of this section. That language says that Verizon will provide GNAPs with 30 days' prior written notice of any discontinuance of service, unless a different notice period is specified in an applicable tariff. GNAPs is entitled to receive at least 30 days' notice to a discontinuance of service, and should not be bound by a tariff provision that sets a shorter amount of time.
- Additional services § 5.1: Verizon's proposed language is adopted. As Verizon states, Voice Information Service is not subject to reciprocal compensation provisions. Both Verizon and GNAPs recoup their costs via arrangements with the third-party service/content provider.
- Interconnection § 6.1.1: Verizon's proposed language is adopted. GNAPs would seek to limit the traffic to that for which CPN is passed, without providing any terms for what rate application should apply to minutes where CPN is not passed.

- Interconnection § 7.2: GNAPs' proposed language is adopted. GNAPs will not be subject to additional charges for transporting calls to its POI.
- Interconnection § 7.3: Verizon's proposed language is adopted, with modification. GNAPs' proposed language in Section 7.3.2.1 relating to change in law provisions shall be adopted. The reference to the "FCC Internet Order" shall be revised, in the same manner as required in "T& C Glossary § 2.74" above.
- Interconnection § 7.4: Verizon's proposed language is adopted. While this section does restate federal law, it could be important to have the provision there, if there is a future change in the requirements of the ISP Remand Order.

#### **D. Issue 6**

**Should limitations be imposed upon GNAPs ability to obtain available Verizon dark fiber?**

This issue was resolved by the parties.

#### **Discussion**

#### **E. Issue 7**

**Should two-way trunking be available to GNAPs at GNAPs' request?**

#### **GNAPs' Position**

GNAPs acknowledges that Verizon does not oppose offering GNAPs two-way trunks, but it insists that the parties need to agree on operational responsibilities and design parameters. GNAPs believes that there will likely be future disagreements on these operational aspects.

Verizon claims that GNAPs is in the best position to forecast both its traffic terminating on Verizon's network and Verizon's traffic terminating on GNAPs' network. In other words, Verizon is making GNAPs responsible for both carriers' traffic forecasts. This is discriminatory and burdensome. A more



equitable resolution is that presented by GNAPs, in that each carrier forecasts the traffic that it believes will terminate on the other carrier's network.

In its Supplemental Filing, GNAPs proposes the following contract language associated with Issue 7:

- T&C Glossary § 2.93 "Traffic Factor I": GNAPs removes the exclusion of Measured Internet Traffic from this formula.
- T&C Glossary § 2.94 "Traffic Factor II": GNAPs replaces "intrastate traffic" with "other traffic."
- Interconnection § 2.2.4: GNAPs' proposed modification, which should read "POI" rather than "IP" makes this provision consistent with earlier POI language, and makes trunk ordering requirements symmetrical.
- Interconnection § 2.4.2: GNAPs clearly indicates that GNAPs has discretion over the initial number of two-way trunks ordered.
- Interconnection § 2.4.4: GNAPs makes forecast obligations for two-way trunking symmetrical upon the parties and indicates that GNAPs' reasonable efforts to provide forecasting according to Verizon's guidelines, rather than strict compliance, are sufficient. It allows Verizon to refuse to accept a substantially compliant forecast unless Verizon demonstrates that newly provided forecast information materially alters the accuracy of the forecast.
- Interconnection § 2.4.6: GNAPs eliminates a potential barrier to GNAPs' use of two-way trunking by indicating that both parties are required to use specified equipment only where technically feasible.
- Interconnection § 2.4.8: GNAPs eliminates a potential barrier to GNAPs' use of two-way trunking by indicating that both parties are required to use accepted industry standards rather than a single source of carrier

specifications for two-way interconnection trunk groups.

- Interconnection § 2.4.9: GNAPs eliminates a potential barrier to GNAPs' use of two-way trunking by raising performance standards for two-way interconnection trunk groups, thereby reducing the likelihood that Verizon will provide GNAPs inferior facilities of its own.
- Interconnection § 2.4.10: GNAPs eliminates a potential barrier to GNAPs use of two-way trunking by requiring Verizon to accept GNAPs' ASRs and to ensure timely installation and activation of such trunks.
- Interconnection § 2.4.11: GNAPs makes monitoring and action to counteract service blockages symmetrical and, hence, more equitable.
- Interconnection § 2.4.12: GNAPs eliminates a potential barrier to GNAPs' use of two-way trunking by eliminating a non-symmetrical requirement that GNAPs submit ASRs to disconnect interconnection trunks in the event of low utilization.
- Interconnection § 2.4.13: GNAPs eliminates Verizon language that attempts to insulate itself from performance requirements in connection with two-way interconnection trunks.
- Interconnection § 2.4.14: GNAPs increases the speed at which either party may replace two-way interconnection trunk groups with one-way interconnection trunk groups.
- Interconnection § 2.4.16: GNAPs' proposed modification makes this provision regarding use of proportionate percentage of use symmetrical upon the parties and, therefore, more equitable. The proposed provision also eliminates an initial 50% per facilities per party presumption that would likely represent a windfall for Verizon over amounts it would be due under the actual Proportionate Percentage of Use (PPU).

It eliminates an unsymmetrical provision that provides that GNAPs must pay for 50% of the nonrecurring charges for interconnection trunks on the Verizon side of GNAPs' IP, and 100% of nonrecurring charges for the portion of facilities on GNAPs' side of the GNAPs' IP.

### **Verizon's Position**

Verizon agrees with GNAPs that pursuant to 47 C.F.R. § 51.305(f), GNAPs has the option to decide whether it wants to use two-way trunks for interconnection. GNAPs' option to use two-way trunking, however, leaves unanswered many operational issues. Because Verizon should be involved in resolving the operational issues that will impact its network, Verizon proposes contract language to ensure mutual consultation and agreement with GNAPs:

- T&C Glossary §§ 2.93 and 2.94: Verizon's proposed terms "Traffic Factor 1" and "Traffic Factor 2" are used in the ICA to separate types of traffic exchanged via interconnection trunks for purposes of rating and billing. GNAPs' changes appear to remove any concession that Measured Internet Traffic is not interstate in nature, which is contrary to the FCC's ruling on the issue. GNAPs' changes to "Traffic Factor 2" muddy the waters. Changing the term "intrastate traffic" to "other" traffic makes the definition vague and unworkable.
- Interconnection §§ 2.2.4(b) and 2.4.11: GNAPs has inserted the terms "originating party" and "terminating party" into these sections. The use of these terms for two-way trunks makes no sense because, on a two-way trunk, both parties originate and terminate traffic. For example, in § 2.4.11, GNAPs would have both parties submit access service requests (ASRs) to one another for the same trunk group. This would create confusion. GNAPs' proposed modifications are also inconsistent with GNAPs' proposed language in §§ 2.4.2 and 2.4.10

in which GNAPs proposed that it would be the only party to submit an ASR.

- Interconnection § 2.4.2: This section is necessary to ensure that both parties decide on the initial number of trunks needed before exchanging traffic. Such agreement is particularly important for the parties in California where they have no history of exchanging traffic. These two-way trunks affect network performance and operation, and each party should have the ability to address these effects. GNAPs does not present any evidence to support its proposed changes.
- Interconnection § 2.4.4: GNAPs' unexplained changes to this section would seem to require Verizon to provide GNAPs with a traffic forecast and alter the good-faith, nonbinding traffic forecast into a trunk reservation policy. GNAPs should be the only party to provide a good faith forecast for both its inbound and outbound traffic because only GNAPs knows how much traffic will originate and terminate on its network. GNAPs needs to provide this information to Verizon because Verizon must ensure that it has adequate facilities in place to meet GNAPs' trunk orders. GNAPs has agreed to this arrangement with Verizon in other jurisdictions.
- Interconnection §§ 2.4.8, 2.4.9, 2.4.13, 2.4.14: GNAPs' revisions to these sections would provide GNAPs with a better grade of service than what Verizon provides to other carriers with whom it interconnects or to itself. In the Level 3 FAR, Level 3 argued for a higher blocking standard than the standard Pacific applied to itself and other carriers. Relying on Iowa Utilities Board v. FCC, the arbitrator held that Pacific was not obligated to provide Level 3 with a better grade of service than what Pacific provides for itself.
- Interconnection § 2.4.12: Without explanation, GNAPs has eliminated this section that would enable Verizon to disconnect some underutilized trunks from trunk

groups. When trunk groups are significantly underutilized, Verizon only disconnects enough excess trunks to ensure that Verizon will be able to manage its network in an efficient manner. If Verizon cannot disconnect these underutilized trunks, this could have a negative impact on other carriers that order interconnection trunks from Verizon. GNAPs would force Verizon to maintain excess capacity for GNAPs at Verizon's expense without any revenue or benefit to Verizon.

- Interconnection § 2.4.16: The purpose of Verizon's recurring and nonrecurring charges are meant to compensate Verizon for the work Verizon performs on those two-way trunks. Verizon only assesses GNAPs a recurring charge for the two-way trunks that is commensurate with the traffic that GNAPs originates to Verizon. GNAPs' edits make this provision less equitable because they would require Verizon to perform work on two-way trunk facilities on GNAPs' behalf and GNAPs would not compensate Verizon for its services. With regard to the nonrecurring charges, when Verizon supplies the two-way trunk, it performs work on behalf of GNAPs. Because Verizon uses the two-way interconnection trunk with GNAPs, Verizon derives a benefit from the service it provided to GNAPs, so it assesses GNAPs only a 50% nonrecurring charge for the costs Verizon incurs.
- Interconnection § 6.2: The requirement that the parties exchange CPN data is critical to ensuring the proper traffic classification. GNAPs' changes to § 6.1 amount to a "trust us" approach. GNAPs compounds the concerns raised by its edits to §§ 6.1 and 6.2 by deleting in § 6.3 any right either party has to audit traffic to determine whether the traffic classification is correct. GNAPs offers no specific explanation for its changes to § 6.3.
- Interconnection § 7: Without explanation, GNAPs proposes to delete the qualifier "Except as expressly

specified in this Agreement" from the statement in § 7.2 that no additional charges shall apply for the termination from the IP to the Customer of Reciprocal Compensation Traffic delivered to the Verizon-IP by GNAPs or the GNAPs-IP by Verizon. In § 7.3.3, GNAPs deletes the reference to calls originated on a 1+ presubscription or casual dialed calls in the same way as it did in the Glossary definition of "Toll Traffic." In § 7.4, GNAPs would delete the requirement for symmetrical reciprocal compensation rates between the parties. This proposal is in contradiction of the FCC's requirement for symmetrical reciprocal compensation between carriers as described in 47 C.F.R. § 51.711. GNAPs has not submitted a cost study to the Commission to support its position.